

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF THE UNION )  
LIGHT, HEAT AND POWER )  
COMPANY RELATING TO SALE )  
OF 7200 INDUSTRIAL ROAD )  
CONSTRUCTION/MAINTENANCE )  
CENTER BUILDING )

CASE NO. 2005-00199

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COMMENTS OF THE ATTORNEY GENERAL

The Attorney General files the following comments in accord with the procedural schedule entered June 9, 2005. Analysis of the responses of ULH&P to the Attorney General's Request for Information by one with an understanding of the accounting involved is lacking as the Attorney General's consulting witness is and has been unavailable since the Company's responses to Requests for Information were filed.

Regardless, the Attorney General continues to be troubled by the inclusion of 100% of the original cost of the building in the jurisdictional rate base in connection with the plan to allow ULH&P's non-jurisdictional operations to retain the majority of the proceeds of the sale of the building despite the absence of any ownership interest by the non-jurisdictional operations. According to Paragraphs 4(a) through (d) of the application, the building was purchased in 1994 to give a new home to the gas and electric maintenance/repair operations that had been displaced by a condemnation of their former location in 1994. In 1998 Union's affiliate, Cinergy Trading Services, leased half of the building and invested \$21 million in improving its leased premises for use as a wholesale electric trading center. Cinergy Trading Services only occupied its half of the building for four years and left in 2002. Two years later, in 2004, the half of the building that

had been occupied by Cinergy Trading Services was leased (together with a right of first refusal) for a 15 plus year term to Cincinnati Bell for Cincinnati Bell's use as a data processing center.

The Cinergy Trading Services' investment in the building was made as a tenant, not as an owner. It was made by an unregulated affiliate for use in trading associated with unregulated electric wholesale sales. To allow recovery of those investments and access to a share of the proceeds from the sale of the building in the absence of any ownership rights by Cinergy Trading Services on the same basis as access is granted to the return of investment and profit from the sale for the owner seems to accord an unregulated affiliate better than a free ride on the jurisdictional operation's nickel. Not only did Cinergy Trading Services have no ownership interest when it made its investment, and therefore no direct right to recover that investment or any profit that may be generated from the sale of the building, the building did not continue to be utilized as a trading center by Cincinnati Bell. Consequently, it is not clear that the investment to turn one-half of the building into a trading center will contribute at all to the overall profit generated on sale, much less that it will contribute in direct proportion to the amount of the investment made.

Nevertheless, the proposed allocation of proceeds of the sale is to be made in accord with the percentages laid out in the response to the PSC Request for Information Question 2, which allocates recouped investment plus sharing in any potential profit on a percentage that directly reflects the proportionate amount of dollars invested. This allocates approximately  $\frac{3}{4}$  of recouped investment plus any profits from a sale to non-jurisdictional operations because of investments made by a non-owner affiliate tenant to turn one-half of the building into something for which it has not been used for over two years.

In the application, the proceeds attributable to the net book value associated with the \$21 million investment to turn half of the building into a trading center are designated for ULH&P's non-jurisdictional operations. If that means Cinergy Trading Services, then the question remains, what right has Cinergy Trading Services to recoup its investment or claim a proportionate share of the profits of any sale? However, the application seeks approval to recoup that investment and give the proportional share to ULH&P's non-jurisdictional operations. If that is not the same as Cinergy Trading Services, then what right has ULH&P's non-jurisdictional operations to anything, either to recoup an investment it did not make or to profits arguably flowing from that investment? The basis to accord ULH&P's non-jurisdictional operations the right to recoup the investment by an unregulated affiliate, Cinergy Trading Services, is not evident. Neither is ULH&P's non-jurisdictional operation's right to lay claim to any profit in proportionate share to the investment made by a tenant affiliate evident. No legal grounds for that sharing in the proceeds of the sale has been presented. Absent an ownership interest, it simply is not clear what basis exists for the non-jurisdictional operations to claim any portion of the proceeds of the sale, much less what now appears as a result of the answer to PSC Question 3 to be the lion's share of the proceeds of the sale.

Respectfully submitted,



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NOTICE OF FILING AND CERTIFICATION OF SERVICE

I hereby give notice that I have filed the original and ten true copies of the foregoing with the Executive Director of the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601 this the 5th day of July, 2005, and certify that this same day I have served the parties by mailing a true copy, postage prepaid, to the following:

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